



# PUBLIC NOTICE

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DA 04-3650

Released: November 19, 2004

## DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF LAYERONE HOLDINGS, INC., TO SWITCH & DATA FACILITIES COMPANY, INC.

### STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 04-417

Comments Due: December 3, 2004

Reply Comments Due: December 10, 2004

On November 10, 2004, LayerOne Holdings, Inc. ("LayerOne") and Switch & Data Facilities Company, Inc. ("Switch & Data") (collectively, the Applicants) filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> requesting authority to transfer control of the domestic blanket Section 214 authorizations held by LayerOne and its subsidiary, LayerOne Communications, LLC ("LayerOne Comm") to Switch & Data.<sup>2</sup>

Applicants assert that this transaction is entitled to presumptive streamlined treatment under section 63.03(b)(1)(i) of the Commission's rules<sup>3</sup> because neither the Applicants, nor any affiliate of the Applicants is a facilities-based carrier. Applicants also assert that the proposed transaction is eligible for presumptive streamlined treatment under section 63.03(b)(2)(i) of the Commission's rules because: (1) the proposed transaction will result in Switch & Data having a market share in the interstate, interexchange market of less than 10 percent; (2) Switch & Data would provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and (3) neither the Applicants nor their affiliates is dominant with respect to any service.<sup>4</sup>

<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04; see 47 U.S.C. § 214.

<sup>2</sup> The Applicants seek to transfer authorizations to provide domestic private line services to all interstate points through the resale of existing facilities of authorized U.S. common carriers.

<sup>3</sup> 47 C.F.R. § 63.03(b)(1)(i).

<sup>4</sup> 47 C.F.R. § 63.03(b)(2)(i).

LayerOne is a Texas corporation that provides network neutral interconnection and collocation services in key U.S. markets. These network neutral interconnection points allow internet service providers, content providers, and telecommunications carriers to interconnect with one another in a single location. The Applicants state that the following entities own more than 10 percent of the equity of LayerOne: David Belford (54.96%), Jeffrey L Olyan (14.23%), and Freeman Capital Ltd. (13.25%).<sup>5</sup>

Switch & Data, a Delaware corporation, is also a provider of interconnection and carrier neutral collocation services throughout the United States and in one market in Canada.<sup>6</sup> Switch and Data provide collocation facility services that include providing space for customer equipment, power and cooling for such equipment, and a physically secure collocation environment. The following entities own more than 10 percent of the equity of Switch & Data: Capstreet II, L.P. ("Capstreet") who holds a 24.09% interest, CEA Capital Partners USA, L.P. ("CEA") who owns a 10.65% interest, and Seaport Capital Partners II, L.P. ("Seaport") who owns a 15.58% interest. The Applicants add that the general partner of Capstreet is Capstreet GP II, L.P., a Delaware limited partnership.<sup>7</sup> The general partner of CEA is CEA Investment Partners, L.P., a Delaware limited partnership.<sup>8</sup> Finally, the general partner of Seaport is CEA Investment Partners II, LLC.<sup>9</sup>

The Applicants have entered into an agreement which is part of this proposed transaction by which LayerOne Acquisition, Inc., a wholly owned subsidiary of Switch & Data, will merge with and into LayerOne, leaving LayerOne a wholly owned subsidiary of Switch & Data ("Merger"). Upon consummation of the Merger, LayerOne's subsidiary, LayerOne Comm will become a wholly owned indirect subsidiary of Switch & Data. The consideration for the Merger will be the payment of cash by Switch & Data to LayerOne shareholders in exchange for their shares in LayerOne.

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<sup>5</sup> The Applicants add that the general partner of Freeman Capital Ltd. is Freeman G.P. Inc., which is owned 100% by Brandon W. Freeman who is a U.S. citizen.

<sup>6</sup> Furthermore, as a result of its acquisition of the RACO Companies on March 11, 2004, Switch & Data now controls subsidiaries that provide international private line service on a resale basis between Canada and the U.S. and provides interlata intrastate private line service within the State of New York.

<sup>7</sup> The general partner of Capstreet GP II, L.P. is Capstreet Group, LLC, a Delaware limited liability company. The controlling member of Capstreet Group, LLC is George Kelly with a 75% ownership interest, who is also the sole managing member and a U.S. citizen. The Applicants state that no limited partner of Capstreet owns an equity interest large enough to require disclosure.

<sup>8</sup> The Applicants add that the general partner of CEA Investment Partners, L.P. is CEA Capital Corp., which owns 49.5% of the equity. The 100% stock owner of CEA Capital Corp. is J. Patrick Michaels, Jr. Family Trust, J. Patrick Michaels, Jr., Sole Trustee. The Applicants further indicate that J. Patrick Michaels is a U.S. citizen. Furthermore, no limited partner of CEA owns an equity interest large enough to require disclosure.

<sup>9</sup> According to the Applicants, CEA Investment Partners II, LLC is owned by Seaport Associates, LLC, (75% member). Bill Luby and Jim Collis are the managing members of Seaport Associates, LLC and together own approximately 64% of Seaport Associates, LLC, but neither owns more than 50% individually, nor does any one else. Finally, the Applicants state that Bill Luby and Jim Collis are U.S. citizens and that no limited partner of Seaport owns an equity interest large enough to require disclosure.

The Applicants assert that the proposed transfer of control will serve the public interest by providing fast and cost-effective solutions for establishing a point-of-presence and interconnecting with their vendors and customers. According to the Applicants, these solutions lower the barriers to entry for start-up and emerging services providers, such as VoIP providers and application service providers, as well as international carriers seeking to improve domestic connectivity. In addition, by lowering infrastructure costs, expanding connectivity options, and accelerating provisioning cycles, the services offered by Switch & Data and LayerOne create efficiencies that ultimately benefit end-user businesses and consumers. Finally, the Applicants state that the Merger will achieve economies of scale and scope that would not otherwise have been available to Switch and Data and LayerOne operating individually, and will improve competition.

## **GENERAL INFORMATION**

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments on or before December 3, 2004 and reply comments on or before December 10, 2004.**<sup>10</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer control on the 31<sup>st</sup> day after the date of this notice.<sup>11</sup> Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

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<sup>10</sup> See 47 C.F.R. § 63.03(a).

<sup>11</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

**In addition, one copy of each pleading must be sent to each of the following:**

- (1) the Commission's duplicating contractor, Qualex International, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: [qualexint@aol.com](mailto:qualexint@aol.com); facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: [tracey.wilson-parker@fcc.gov](mailto:tracey.wilson-parker@fcc.gov);
- (3) Denise Coca, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: [denise.coca@fcc.gov](mailto:denise.coca@fcc.gov);
- (4) Terri Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: [terri.natoli@fcc.gov](mailto:terri.natoli@fcc.gov);
- (5) Christopher Killion, Office of General Counsel, 445 12<sup>th</sup> Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: [chris.killion@fcc.gov](mailto:chris.killion@fcc.gov).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Denise Coca at (202) 418-0574.

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